

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOSEPH C. SANSONE CO.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05CV1570 RWS
)	
DOW CORNING CORP.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before me on Defendant's Motion to Dismiss Count II of Plaintiff's Amended Complaint [#26]. The motion is without merit and will be denied.

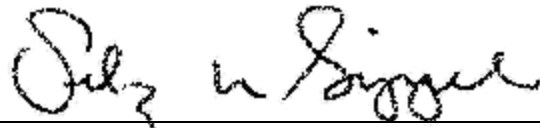
Sansone has filed a two-count amended complaint against Dow. Count I alleges breach of contract. Count II alleges a claim for quantum meruit. Dow has moved to dismiss arguing that Sansone may not plead both breach of contract and quantum meruit. Dow is incorrect.

Under Fed. R. Civ. P. 8 (e), a party may plead alternative theories. In Missouri, a party may plead both breach of contract and quantum meruit. E.g., Boyd v. Lane, 869 S.W.2d 305, 307 (Mo. Ct. App. 1994). Sansone's breach of contract and quantum meruit claims are properly pled under Rule 8 and Missouri law.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss [#26] is
DENIED.

Dated this 4th day of May, 2006.

A handwritten signature in cursive script, appearing to read "Rodney W. Sippe", written in black ink.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE